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FM AMEMBASSY KUALA LUMPUR  
TO RUEHC/SECSTATE WASHDC PRIORITY 9301  
INFO RUCNASE/ASEAN MEMBER COLLECTIVE  
RUCNISL/ISLAMIC COLLECTIVE  
RUEHBY/AMEMBASSY CANBERRA 2327  
RUEHKO/AMEMBASSY TOKYO 2400  
RUEHWL/AMEMBASSY WELLINGTON 0533  
RUEHLO/AMEMBASSY LONDON 0325  
RUEHOT/AMEMBASSY OTTAWA 0375  
RUEHFR/AMEMBASSY PARIS 0185  
RUEAWJA/DEPT OF JUSTICE WASHDC  
RUEAIIA/CIA WASHDC  
RHHMUNA/USCINCPAC HONOLULU HI  
RHEFHLC/HOMELAND SECURITY CENTER WASHINGTON DC  
RUEKJCS/SECDEF WASHDC  
RHEHNSC/NSC WASHDC

S E C R E T SECTION 01 OF 05 KUALA LUMPUR 000902

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STATE FOR S/CT, INL, DS/ATA AND EAP

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TAGS: [PTER](#) [PREL](#) [PGOV](#) [PINR](#) [KISL](#) [KJUS](#) [ASEC](#) [MY](#)

SUBJECT: PROSECUTING TERRORISTS IN MALAYSIA: LOOKING BEYOND  
ISA

REF: A. 06 KUALA LUMPUR 2108 -- NEW ANTI-TERROR LAWS

[1](#)B. 06 KUALA LUMPUR 1977 -- TERROR SUSPECTS RELEASED

Classified By: Ambassador Christopher J. LaFleur for reasons 1.4 (b, c  
and d).

Summary

[1](#)1. (S) Assisting Malaysia to develop the capacity to successfully investigate and prosecute terrorists would support key U.S. law enforcement and political objectives in this strategic Muslim-majority country. Malaysia has used an intelligence approach and the Internal Security Act (ISA), including its detention without trial provisions, to very effectively preempt terrorist acts within its boundaries since 2001. Malaysia's finalization of new counterterrorism provisions in its law appears directed at addressing international perceptions rather than signaling a shift to a law enforcement approach. Carrying out criminal investigations and successful prosecutions of terrorists, however, would improve prospects for law enforcement cooperation with us and other countries, as well as allow for long-term incarceration of terrorists not feasible under ISA. Politically, the successful trials of terrorists would demonstrate to a skeptical Malaysian public the reality of the regional terrorist threat, and support our goal of strengthening democracy in an advanced Muslim-majority society. The U.S. and partner nations, such as Australia, the UK, Canada and France can play a role by providing technical assistance to Malaysian police and prosecutors. Malaysia also could use the skills imparted through such assistance to prosecute other complex conspiracies, including narcotics and financial crimes. The choice whether to prosecute terrorists will be Malaysia's and it is not without risk, but by building Malaysia's capacity in this area, we help provide Malaysia's leaders with an alternative in line with our law enforcement interests and democracy goals in the Muslim world. End Summary.

No Bombings in Malaysia

¶2. (S) Since 2001, Malaysia, led by the Police Special Branch operating as the country's internal intelligence agency, has so far effectively preempted regional terrorist organizations, particularly Jemaah Islamiyah (JI), from carrying out terrorist acts within its borders. Special Branch has arrested approximately 100 terrorist suspects over the past six years, making use of the 1960 Internal Security Act (ISA), a law drawn from colonial era antecedents used to fight the Communist insurgency. ISA allows for detention without trial based on threats to national security and includes a review process at least every two years. The terrorist suspects detained included Malaysians credibly linked to the planning of significant terrorist attacks against the United States, and persons who abetted the 2002 Bali bombing. As a result of an aggressive intelligence approach backed by the ability to jail without trial suspected terrorists before they strike, Malaysia has not experienced any terrorist incident since 9/11, in stark contrast to the tragic attacks in neighboring Indonesia and the Philippines.

#### Average Four Years Detention for Suspected Terrorists

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¶3. (S) Malaysia uses a rehabilitation approach to ISA detention, releasing suspects believed to be largely or wholly changed in their willingness to carry out or support terrorism. The police attempt to monitor persons released from ISA in order to catch recidivists. Malaysia has found it hard to keep suspects in ISA detention for more than four years. To date, Malaysia has released over 35 terrorist suspects out of the approximately 100 detained between 2001

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and the present. On average, Malaysia has held terror suspects for three to four years before release. One example is Abdul Manaf Kasmuri; a Malaysian member of JI, credibly associated with Indonesian terrorist Hambali, linked to the 2002 Bali bombing, and who reportedly abetted planning of terrorist acts in the U.S. He was released from ISA in October 2006, following 3 1/2 years in jail despite continued concerns about his ideology and links to terrorists. Malaysia has not yet prosecuted any terrorist suspects, unlike Indonesia, which has tried and convicted several hundred terrorists and their supporters since 2003, and the Philippines, which continues to pursue prosecutions despite serious obstacles.

#### Good on Paper: Strengthened CT Laws

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¶4. (S) Malaysia strengthened its theoretical ability to investigate and prosecute terrorists with new legal provisions that came into effect earlier in 2007. The new statutes provide police with wider investigative powers and include heavy penalties, including the death sentence, for terrorist crimes. Were Malaysia to employ the new law, the Malaysian police criminal investigative divisions (CID and CCID)) and prosecutors under the Attorney General's Office (AGO) would need to take the lead in investigating terrorists, building cases, and obtaining convictions in court. Use of ISA and prosecution under the terrorism statutes are not mutually exclusive; Malaysia can employ both. We have had no clear sign, however, of Malaysia's intention to bring terrorist suspects to trial. Law enforcement trainers from several allied countries have voiced expectation that Malaysia eventually will employ the CT laws. Malaysian officials, however, have indicated that satisfying international expectations and allowing Malaysia to comply with existing UN counterterrorism conventions were the primary motivating factors in passing the new anti-terror provisions.

¶5. (S) A number of factors may lead the GOM to continue to rely on an ISA/intelligence approach to terrorist suspects.

The ISA is easy for the GOM to employ, as it does not require complicated investigations and strict evidentiary procedures, and for all practical purposes cannot be challenged in court.

The Special Branch, with the lead on CT, essentially reports to the Prime Minister rather than the normal police hierarchy, and does not sufficiently trust police investigators and prosecutors on sensitive issues like terrorism. The GOM likely is concerned that it might fail to gain convictions for terrorists brought to trial. Finally, GOM officials also may be wary of public scrutiny of terrorism issues in Malaysia, which could either tarnish Malaysia's self-promoted image as a "moderate" Muslim majority country or result in public controversy related to political Islam.

16. (S) We note that Malaysia has relied on the ISA as a preventative measure, stopping terrorists before they can carry out attacks within Malaysia. If terrorists succeeded in executing an attack within Malaysia, we believe it very likely the police would pursue an investigation through CID channels, as well as Special Branch, with the intention of prosecuting the terrorists in court. The GOM still might use ISA detention authority, particularly to arrest and hold suspects in an initial period.

What's at Stake?

17. (S) Malaysia's intelligence approach and use of the ISA have proven very effective in stopping terrorist actions in Malaysia over the medium term. Over the longer term, however, Malaysia's exclusive reliance on the intelligence approach contains certain drawbacks and risks to our broader law enforcement and political objectives:

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1A. Heavier Penalties Needed: The length of ISA detention, ranging normally from two to four years, does not represent a significant penalty for persons who have plotted and abetted mass-casualty terrorist attacks in the U.S., Malaysia or elsewhere. Such short detention periods contrast with the severe penalties available under the CT laws, including jail sentences from 7 to 30 years and the death penalty. CT prosecutions offer the potential of long-term incarceration of serious offenders, something not viable using ISA.

1B. Rehabilitation and Monitoring Uncertain: The efficacy of Malaysia's terrorist rehabilitation approach remains an open question. For some individuals it appears effective, for others less so, and for a few not at all. Not all terrorist suspects cooperate with the rehabilitation program and it is uncertain if the GOM can indefinitely detain such persons under ISA or if political pressures will build for their release. As the number of released terrorist suspects increases over time, Malaysian police presumably will face greater difficulties in monitoring their activities.

1C. Law Enforcement Cooperation: Malaysia's intelligence approach does not focus on developing legally admissible evidence against suspects, and thus limits potential cooperation with U.S. law enforcement agencies. Information from terrorists apprehended under ISA does not translate into evidentiary material that would be admissible in U.S. or Malaysian courts. This undercuts the usefulness of our Mutual Legal Assistance Treaty with Malaysia. It also limits Malaysia's CT law enforcement cooperation with neighboring countries.

1D. Public Information, Public Opinion: Lack of trials for terrorists and the secretive nature of ISA detention have limited the public's awareness and understanding of the terrorist threat. While Malaysia has rounded up over 100 suspected terrorists in six years, and Malaysia continues to serve as a support and transit area for JI and other terrorists, opinion polling shows that Malaysians do not

believe they face a serious terrorist threat. Limited public information has generated some degree of skepticism regarding the government's detention of suspected terrorists, leading some Malaysians we encounter to conclude that ISA has been misused against innocent Muslim activists or political opponents to the ruling National Coalition. While the Malaysian government appears to be concerned over public reaction from its core Malay Muslim constituency, the secrecy surrounding ISA does not help convince the Malaysian public regarding the reality of the terrorist threat and terrorist leaders like Usama Bin Laden score high approval ratings among Malay Muslims.

¶E. Democracy, Rule of Law: Under Prime Minister Abdullah, we do not believe the police have abused ISA detention powers for political purposes to any significant extent. However, ISA remains a sweeping, extra-judicial and potentially draconian tool that can be and has been employed for anti-democratic ends. Former Prime Minister Mahathir used the ISA to jail political opponents, most famously in the case of his former deputy Anwar Ibrahim and his supporters. Under changed circumstances, Malaysian leaders could again misuse ISA against political opponents, seriously undercutting our democracy and human rights objectives in this Muslim-majority country. Some Malaysian political oppositionists and rights activists assert incorrectly that alleged U.S. pressure is responsible for Malaysia's use of the ISA against suspected terrorists.

Providing an Alternative

¶8. (C) While the prosecution of terrorists would support our long-term goals, the ability of police CID and the prosecutors to carry out successful terrorism-related

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investigations and prosecutions is far from certain. Embassy offices, and those of our allies, working with Malaysian law enforcement give low marks to the Malaysians in terms of investigating complex crimes and conspiracies, and trying these successfully in court. Without the necessarily strong skill sets in its police and prosecutors, Malaysia will be far less likely to adopt a law enforcement approach to terrorism.

¶9. (C) Malaysian police and prosecutors need to bolster their skill sets in order to take on terrorism cases with confidence. We have identified a number of related training needs:

- basic investigative skills
- intelligence/analytical cycle training
- conspiracy investigation
- forensic collection
- interview and interrogation
- money laundering/terrorism financing
- major crime scene management
- conspiracy prosecutions training
- specialized CT prosecutions training
- task force development

¶10. (C) We should examine providing specialized CT training to individuals in CID, CCID and Special Branch who are most likely to handle potential CT investigations. As we approach these training needs, we also should consider developing courses for use in the Police College, and adoption of a train-the-trainer approach. The Malaysian police are poised to begin a rapid expansion of their ranks and integrating basic CT related training into the standard curriculum would help new recruits start their careers with a solid investigative background. Basic law enforcement training is an area where we have the opportunity to positively influence law enforcement agencies and their personnel on a broad scale.

Supporting Our Broader Law Enforcement Goals

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¶11. (C) Training police and prosecutors to successfully handle terrorism cases would offer clear benefits beyond our critical counterterrorism priorities. The same skills sets we should seek to develop for CT investigators/prosecutors could be readily applied to our other important law enforcement objectives, particularly counter-narcotics, preventing proliferation of weapons of mass destruction, and combating trafficking in persons. Developing competence in conspiracy investigations and use of a task force approach would assist with our broad law enforcement and security agenda.

Greater Resources Needed  
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¶12. (C) Post has actively sought to take advantage of existing USG programs to improve Malaysian law enforcement capacity, including skills related to counterterrorism. These include DS/ATA courses and ILEA/Bangkok programming. Post is now more consciously pursuing training goals directly related to terrorism investigation and prosecution, and complex criminal conspiracies. Recent training has proven useful in gaining interest among officials as senior as the head of police to pursue development of law enforcement units and structures that enable greater collaboration between police and prosecutors.

¶13. (C) More USG resources will be needed as we pursue these goals. Some flexibility in determining the types of training or assistance based on GOM's expressed need is key since Malaysia will want to plot its own course forward and avoid being perceived as directed by the U.S. in their efforts. As one new initiative, Post is exploring the possibility of funding for key police officials and prosecutors to travel

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together and witness the U.S. task force approach to criminal conspiracies, including terrorism. In the short term, Embassy offices will be approaching Washington offices to explore other means of stepping up our engagement to build Malaysian capacity for CT investigations and prosecution.

Coordination with our Allies  
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¶14. (C) Our like-minded allies also hold part of the solution. We continue to coordinate our CT assistance efforts with the Australian, UK, Canadian, Japanese and other foreign efforts in Malaysia. Working-level counterparts from Australia, the UK and Canada are exploring how they can support Malaysia's ability to prosecute terrorists. We recognize that Commonwealth countries have more in common with Malaysia's legal system and hence may have a comparative advantage in technical assistance in some areas.

Comment  
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¶15. (S) The U.S. has a clear interest in strengthening Malaysia's ability to investigate, prosecute and convict terrorists and their co-conspirators, and U.S. agencies should examine ways to increase our support of this goal. The choice whether to prosecute terrorists will be Malaysia's and it is not without risk, but by building Malaysia's capacity in this area, we help provide Malaysia's leaders with an alternative in line with our law enforcement interests and democracy goals in the Muslim world.  
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